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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,747	04/19/2006	Jorg Harren	5003073.070US1	5291

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SMITH MOORE LEATHERWOOD LLP  
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EXAMINER
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WESTERBERG, NISSA M

ART UNIT	PAPER NUMBER
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1618

NOTIFICATION DATE	DELIVERY MODE
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08/05/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/563,747	<b>Applicant(s)</b> HARREN ET AL.	
	<b>Examiner</b> Nissa M. Westerberg	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22, 24 - 27, 29 - 47, 50 - 61, 69 - 71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22, 24 - 27, 29 - 47, 50 - 61, 69 - 71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 9, 2009 has been entered.

### ***Claim Rejections - 35 USC § 112 – 1<sup>st</sup> Paragraph***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 22, 24 – 27, 29 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a new matter rejection. Paragraph [0034] of the PGPub of the instant application discloses that:

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In one aspect, plant extracts are used as care substances. In another aspect, substances that have no deodorizing effect are used as care substances.

This passage does not provide support for a negative limitation of "an active substance, with the exception of plant powders having a deodorizing effect" as these two concepts have not been linked together. If Applicant is in disagreement with the Examiner regarding support for the amended claim, Applicant is respectfully requested to point to page and line number wherein support may be found for the instant invention and/or explain how the specification does provide support for the limitation.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 22 and 24 – 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Ueda et al. (US 2003/0004479). This rejection is MAINTAINED for the reasons of record set forth in the Office Action mailed February 12, 2009 and those set forth below.

Applicant traverses this rejection on the grounds that the plant powder serves as an odor control agent, which are excluded from the instant claims.

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This argument is unpersuasive. While Ueda et al. contains many examples that utilize plant powders that also act as odor control agents, Applicants attention is directed to referential example 1 (¶¶ [0224] – [0225]). In this example, L-ascorbic acid, better known as vitamin C, was mixed with 75 mol % neutralized sodium acrylate to produce a pulverized water-absorbent resin containing about 0.002% by weight of vitamin C (¶ [0224]). Vitamin C does not read on a plant powder having a deodorizing effect. Vitamin C does read on the skin care substances that are capable of changing the appearance, protecting and/or maintaining the skin in good condition and also reads on a wound-treating substance that are capable of performing at least one of the properties recited in claim 26. Vitamin C is required for collagen synthesis, which plays an important role in wound healing.

The reference is silent as to residual monomer content and active substance availability according to the Extraction test described herein. “As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith.”

**MPEP 2113** It is noted that *In re Best* (195 USPQ 430) and *In re Fitzgerald* (205 USPQ 594) discuss the support of rejections wherein the prior art discloses subject matter which there is reason to believe inherently includes functions that are newly cited or is identical to a product instantly claimed. In such a situation the burden is shifted to the applicants to “prove that subject matter shown to be in the prior art does not possess characteristic relied on” (205 USPQ 594, second column, first full paragraph). The products described in this example of Ueda et al. meet the structural limitations

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regarding the amounts of the various material present in the absorbent particles. The same compositions must inherently have the same properties. Therefore, the burden is shifted to Applicant to show that the properties recited in claims 29 and 30 in particular are not possessed by the cited prior art.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 22, 24 – 27 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ueda et al. (US 2003/0004479). This rejection is MAINTAINED for the reasons of record set forth in the Office Action mailed February 12, 2009 and those set forth herein.

Applicant traverses this rejection on the grounds that that the plant powder serves as an odor control agent, which are excluded from the instant claims.

This argument is unpersuasive. As discussed in greater detail above, a water-absorbing polymer particle that does not use a deodorizing plant powder as the active substance is present in Ueda et al., which reads on the amended claims of this Application so the rejection is maintained.

10. Claims 22, 24 – 27, 29, 30 and 71 were rejected under 35 U.S.C. 103(a) as being unpatentable over Champ et al. (DE 10257002) in view of Ueda et al. (US 2003/0004479). This rejection is MAINTAINED for the reasons of record set forth in the Office Action mailed February 12, 2009 and those set forth below.

Applicant traverses this rejection on the grounds that Champ et al. discloses the surface treatment of foamed hydrogels with a dispersion of a skin care agent. Champ does not disclose the incorporation of the skin substances in water-absorbing polymer

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particles or the addition of the skin care substances to the monomer solution to the polymerization.

These arguments are unpersuasive. The instant claims are composition claims and so a limitation regarding how or when the skin care substance being added to the monomer solution is a product-by-process limitation. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) **MPEP 2113**. The process of the instant claims and the cited prior art produces a polymer particle containing the care substance or wound-treating substance contained therein. Such a product can be obtained by incorporation at the monomer stage prior to polymerization, as recited in the instant claims, by impregnating the active ingredient by spraying or dipping the porous material into a solution of the skin care agent as in Champ et al. (¶ [0025] of the human translation) or by dry blending as in Ueda et al. (see example 1, ¶ [0233]). Applicants have not presented any evidence that product produced by the prior is not the same and is not obvious from the product of the prior art so this rejection is maintained.

While Ueda et al. makes use of plant powders with deodorizing effects that are now excluded from the compositions of claim 22, Ueda also prepares a composition with vitamin C (discussed in greater detail above) and Champ et al. discloses that non-



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deodorizing, non-plant powders such as panthenol and vitamin E, as required in claim 71, can be applied to the porous, water-absorbing materials of the invention (§ [0025] of the human translation).

11. Claims 22, 24 – 27, 29 – 40, 43 – 47, 50 – 57, 59 – 61, 69 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Champ et al. and Ueda et al. as applied to claims 22, 24 – 27, 29, 30 and 71 above, and further in view of Kenndoff et al. (US 5,844,013). This rejection is MAINTAINED for the reasons of record set forth in the Office Action mailed February 12, 2009 and those set forth below.

Applicant traverses this rejection on the grounds that Champ et al. and Ueda et al. do not render it obvious to add skin care agents that do not have a deodorizing effect to the monomer solution prior to polymerization. This is not suggested by Kenndoff et al. The disclosure of Kenndoff et al. would incorporate the active substance into the polyurethane gel and not in the particulate water absorbing material.

These arguments are unpersuasive. As discussed in greater detail above, when the active substance is added to the absorber matrix material is not relevant to the patentability of the composition claims as patentability is determined by the products and not the processes by which the products are produced. Champ et al. and Ueda et al. teach the addition of the active substance to the water-absorbing polymer, so Kenndoff et al. is not required to cure this deficiency.

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12. Claims 22, 24 – 27, 29 – 47, 50 – 61, 69 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Champ et al., Ueda et al., and Kenndoff et al. as applied to claims 22, 24 – 27, 29 – 40, 43 – 47, 50 – 57, 59 – 61, 69 and 71 above, and further in view of Morman et al. (US 5,883,028). This rejection is MAINTAINED for the reasons of record as set forth in the Office Action mailed February 12, 2009 and those set forth herein.

Applicants traverse this rejection on the grounds that Champ et al., Ueda et al. and Kenndoff et al. fail to disclose the addition of skin care agents that do not have a deodorizing effect to the monomer solution prior to polymerization. This is not suggested by Morman et al., which discloses breathable elastic laminates of a film and a nonwoven web.

These arguments are unpersuasive. As discussed in greater detail above, when the active substance is added to the absorber matrix material is not relevant to the patentability of the composition claims as patentability is determined by the products and not the processes by which the products are produced. Champ et al. and Ueda et al. teach the addition of the active substance to the water-absorbing polymer, so Morman et al. is not required to cure this deficiency.

13. Claims 22, 24 – 27, 29, 30, 70 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Champ et al. and Ueda et al. as applied to claims 22, 24 – 27, 29, 30 and 71 above, and further in view of Klofta et al. (US 2002/0165508).

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Champ et al. and Ueda et al. disclose various hygiene products that comprise a particulate water-absorbing component in which an active ingredient, such as panthenol or vitamin E as the active agent is present. To form a composite hygiene article, a top sheet and a back sheet film layer are added (§ [0030] of the machine translation of Champ et al.).

Neither reference discloses the use of dexpanthenol, the D-isomer of panthenol, as the skin care active ingredient.

Klofta et al. disclose absorbent article containing a skin care ingredient (abstract). Due to the variety of skin care actives, the effective concentration of the ingredient should be determined (§ [0060]). Vitamin E (§ [0042]) and dexpanthenol (§ [0055]) are disclosed as a skin care active that is suitable for inclusion in the absorbent article.

It would have been obvious to the person of ordinary skill in the art at the time the invention was made to incorporate dexpanthenol into the water-absorbent compositions of Champ et al. and Ueda et al. The person of ordinary skill in the art would have been motivated to make those modifications and reasonably would have expected success because Klofta et al. discloses the D isomer of panthenol, dexpanthenol, as a skin care active ingredient suitable for inclusion in absorbent articles.

14. Claims 22, 24 – 27, 29 – 33, 37 – 47, 50, 51, 55 – 61 and 69 – 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (US 6,280,765) in view of Bozigian et al. (US 5,977,428).

Gueret discloses a composition comprising a hydrophobic polymer layer bound to a support layer, which reads on a film, which contains particles of various active compounds and particles of water-absorbing agent dispersed homogenously in the polymer layer. This composite reads on a hygiene article. Absorption of water by the absorbent particles will promote the solubilization of the water-soluble active ingredient (col 5, ln 4 – 17). In example 1, 2 g of the care substance vitamin C and 8 g of AQUAKEEP®, a superabsorbent crosslinked polyacrylate with a high degree of swelling (col 5, ln 21 – 24), are added to organopolysiloxane that is then crosslinked and spread on a sheet of 200 µm polyethylene (col 8, ln 34 – 45). AQUAKEEP® is also partially neutralized acrylic acid (col 27, ln 31 – 33 of US 6,180,724). Other care substances or wound treating substances without a deodorizing effect that can be included are vitamin E, also known as tocopherol (example 2, col 9, ln 1 – 15) or D-panthenol (dexpanthenol; col 3, ln 56 – 60). While all of the examples utilize a polysiloxane polycondensate polymer, a polyurethane such as polyester polyurethane or polyether polyurethane type may also be used (col 5, ln 52 – 55).

Gueret does not disclose active substance doped water absorbing polymer particles but rather the two ingredients are added separately to the polycondensate matrix.

Bozigian et al. discloses that the absorbent particles themselves can contain or release a wound healing agent or matrix such as vitamins or minerals (col 4, ln 4 – 9; example 2, col 9, ln 36 – 55).

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It would have been obvious to the person of ordinary skill in the art at the time the invention was made to incorporate the active ingredient such D-panthenol or vitamins E or C into the absorbent particle. The person of ordinary skill in the art would have been motivated to make those modifications because Gueret teaches that water absorption by the active particle will aid in the solubilization of water-soluble active agents such as vitamin C and D-panthenol. The solid active agent and water absorbing particles are separate in the compositions of Gueret. Bozigian et al. discloses that the active agent can be incorporated into the water absorbing particles. Having the water soluble active substance is present in the material that will absorb the water will result in more efficient solubilization than if the solid material to be dissolved were present in separate particles within the polymer matrix.

The amount of the active agent present in the particles will depend on the active ingredient being used, and the desired dosage of the active ingredient desired. As the type of ingredients that can be included in the material are varied, the appropriate amounts of each active can also vary widely, so one of ordinary skill in the art would routinely optimize this amount. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ and reasonably would expect success. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results.

The reference is silent as to some of the physical properties claimed by Applicant (e.g., absorption against pressure according to ERT 442.1-99, residual monomer

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content and active substance availability according to the Extraction test described herein). "As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith." **MPEP 2113** It is noted that *In re Best* (195 USPQ 430) and *In re Fitzgerald* (205 USPQ 594) discuss the support of rejections wherein the prior art discloses subject matter which there is reason to believe inherently includes functions that are newly cited or is identical to a product instantly claimed. In such a situation the burden is shifted to the applicants to "prove that subject matter shown to be in the prior art does not possess characteristic relied on" (205 USPQ 594, second column, first full paragraph). The products described in this example of Ueda et al. meet the structural limitations regarding the amounts of the various material present in the absorbent particles. The same compositions must inherently have the same properties. Therefore, the burden is shifted to Applicant to show that the properties recited in the claims are not possessed by the cited prior art.

15. Claims 22, 24 – 27, 29 – 33, 37 – 47, 50, 51, 55 – 61 and 69 – 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret and Bozigian et al. as applied to claims 22, 24 – 27, 29 – 33, 37 – 47, 50, 51, 55 – 61 and 69 – 71 above, and further in view of Chmelir et al. (US 6,552,141).

Gueret and Bozigian et al. discloses composition comprising water-absorbent partially neutralize polyacrylate particles containing active substance such as vitamin C

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or D-panthenol. These particles can be incorporated into a polysiloxane or polyurethane matrix and applied to a film.

Neither reference explicitly discloses the residual monomer content of the polyacrylate particles.

Chmelir et al. discloses a process for making polymers acrylic acid or derivatives of acrylic acid that have a high absorptive capacity for water, aqueous solutions and body fluids (col 1, 5 – 10). The monomers of the polymer product are known to be toxic (col 1, ln 32 – 34) so a low level of the monomers is desirable.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to prepare a particulate-water absorbing composition as taught by Gueret and Bozigian et al. and to minimize the amount of residual monomer content in the final polymer, as that monomer is known to be toxic, as stated by Chmelir et al., and could leach out of the material while in use, potentially causing negative side effects.

16. Claims 22, 24 – 27, 29 – 34, 37 – 47, 50 – 52, 55 – 61 and 69 – 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret and Bozigian et al. as applied to claims 22, 24 – 27, 29 – 33, 37 – 47, 50, 51, 55 – 61 and 69 – 71 above, and further in view of Champ et al. (DE 10257002).

Gueret and Bozigian et al. discloses composition comprising water-absorbent partially neutralize polyacrylate particles containing active substance such as vitamin C or D-panthenol. These particles can be incorporated into a polysiloxane or polyurethane matrix and applied to a film.

Neither reference explicitly discloses the residual water content or an absorbent polymer material as recited in claim 34.

Champ et al. discloses that foam-like hydrogels can be obtained using 10 – 80% ethylenically unsaturated, acidic-group-containing monomers that are partially (e.g., at least 20 mol%) neutralized; up to 50% by weight other ethylenically unsaturated monomer, 0.001 to 5% a crosslinking agent, an initiator and other optional ingredients (§ [0009] of the machine translation). The water content of the foam has a great influence on the flexibility of the foam, and is preferably between 5 to 60% by weight (§ [0012] of the machine translation)

It would have been obvious to the person of ordinary skill in the art at the time the invention was made to use the absorbent polymer material taught by Champ et al. and to prepare a composition with an appropriate residual water content. The person of ordinary skill in the art would have been motivated to make those modifications if the AQUAKEEP® material disclosed by Gueret not be available and reasonably would have expected success because Champ et al. discloses that the prepared material is also a superabsorbent, partially neutralized polyacrylate material. One of ordinary skill in the art would control the residual water content to produce a product with the desired flexibility based on the requirements of the final product.

17. Claims 22, 24 – 27, 29 – 33, 36 – 47, 50, 51, 54 – 61 and 69 – 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret and Bozigian et al. as



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applied to claims 22, 24 – 27, 29 – 33, 37 – 47, 50, 51, 55 – 61 and 69 – 71 above, and further in view of Kenndoff et al. (US 5,844,013).

Gueret and Bozigian et al. discloses composition comprising water-absorbent partially neutralize polyacrylate particles containing active substance such as vitamin C or D-panthenol. These particles can be incorporated into a polysiloxane or polyurethane matrix and applied to a film.

Neither reference discloses the use of a foam polycondensate material and the water-absorbing polymer particles.

Kenndoff et al. discloses hydrophilic polyurethane gel foams for use in products such as wound dressings that absorb and bind aqueous liquids (col 1, ln 8 – 10, 19 – 20). These materials may also serve a matrix for active substances (col 1, ln 33 – 37). The hydrogels of Kenndoff et al. contain less absorber material, do not in principle require an additional-antistick layer and the foams will adhere to the skin but will not adhere to the wound surface (col 2, ln 31 – 35). These foams can be made by the combination of polyhydroxyl compound and polyisocyanate (which, when polymerized, result in polyurethane), a superabsorber and an accelerator (col 8, ln 10 – 30). Preferred materials are water-absorbing salts, known as superabsorbers, of polyacrylates and copolymers thereof, particularly the sodium or potassium salts (col 7, ln 21 – 29). The water-absorbing superabsorber compound is preferably present in finely ground form, particularly when thin foam layers are required (col 7, ln 46 – 54). The hydrogel foam can be applied to sheet like backing materials, such as polyurethane sheets (col 6 – 24).

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It would have been obvious to the person of ordinary skill in the art at the time the invention was made to use a foamed polyurethane or polysiloxane material into which the water-absorbing particles are incorporated. The person of ordinary skill in the art would have been motivated to make those modifications as a foamed material contains less polymeric material and reasonably would have expected success because Kenndoff et al. discloses that superabsorbents can be incorporated into a foamed matrix and applied to backing materials, the same steps that Gueret undertakes using a non-foamed polycondensate matrix.

18. Claims 22, 24 – 27, 29 – 33, 37 – 47, 50, 51, 55 – 61 and 69 – 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret and Bozigian et al. as applied to claims 22, 24 – 27, 29 – 33, 37 – 47, 50, 51, 55 – 61 and 69 – 71 above, and further in view of Morman et al. (US 5,883,028).

Gueret and Bozigian et al. discloses composition comprising water-absorbent partially neutralize polyacrylate particles containing active substance such as vitamin C or D-panthenol. These particles can be incorporated into a polysiloxane or polyurethane matrix and applied to a film.

Neither reference explicitly discloses the water vapor permeability of the composite.

Morman et al. discloses a breathable elastic laminate particularly useful as an outer cover for disposable diapers and other personal care disposable products (col 1, ln 5 – 10). Good water vapor transmission makes the products more comfortable for the

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wearer (col 26 – 32). Suitable polycondensate polymer materials include polyurethanes (col 2, ln 1 – 5; example 3, col 13) and polyether esters (col 2, ln 1 – 5, example 2, col 13). The moisture vapor transmission rate (water vapor permeability) of the polymer layer should be at least  $300 \text{ g/m}^2\text{-24 hours}$  (col 6, ln 13 – 18). The polymer films described by Morman et al. are highly permeable water but have a low permeability to ammonia and other odor-causing materials (col 1, ln 51 – 52), to allow for comfort while wearing by allowing for transmission of water vapor while reducing odors associated with ammonia in urine and other odor-causing substances.

It would have been obvious to one of ordinary skill in the art at the time to prepare a composite as disclosed by Gueret and Bozigian et al. and to produce the product with the water vapor permeability taught by Morman et al. The person of ordinary skill in the art would have been motivated to make those modifications, and reasonably would have expected success because Morman et al. discloses that polyurethane films with high water vapor permeability increases the comfort and wearability of disposable personal care articles.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nissa M. Westerberg whose telephone number is (571)270-3532. The examiner can normally be reached on M - F, 8:00 a.m. - 4 p.m. ET.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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NMW